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No. 73-2065

In the Supreme Court of the United States

OCTOBER TERM, 1974

CONCORDIA PARISH SCHOOL BOARD,

Petitioner,

v.

SAMMY DAVIS, JR.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

JOHN F. WARD, JR.,
770 North Street,
Baton Rouge, Louisiana 70802.

W. C. FALKENHEINER,
District Attorney,
Vidalia, Louisiana 71373.

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To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Fifth Circuit rendered April 24, 1974.

CITATIONS TO OPINIONS BELOW

The decision of the District Court is unreported and is printed herein as Appendix "A," page 21. The decision of

the Court of Appeals for the Fifth Circuit is unreported and is printed herein as Appendix "B," page 23.

JURISDICTION

Judgment of the District Court was entered on September 1, 1972. Judgment of the Court of Appeals was entered on April 24, 1974. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTIONS PRESENTED

1. May the Federal Courts order the reinstatement, with three or four years' back pay, of a black principal dismissed by the school board after a full due process tenure hearing held in accordance with state's Teacher Tenure Law, at which hearing the principal was represented by counsel, and after which hearing the school board found him guilty of three (3) of four (4) charges of willful neglect of duty, incompetency and dishonesty relating to the mismanagement and misuse of public funds and equipment entrusted to his care merely because the school board had not filed with the District Court, or the District Court had not yet approved, so called "objective criteria" required by previous orders of the District Court pursuant to the decision of the Fifth Circuit Court of Appeals in *Singleton v. Jackson Municipal Separate School System* (5th Cir., 1970) 419 F.2d 1211, and *Smith v. Concordia Parish School Board*, 445 F.2d 285, when:

   1. The District Court had rendered judgment on August 18, 1971 refusing to enjoin the school board from holding its proposed tenure hearing with regard to the dismissal of Respondent Davis, and suggesting same as the proper procedure for the Board to follow.

   2. Respondent Davis took no appeal from such judgment

and waited almost a full year, until June 12, 1972, before taking any action with regard to his dismissal by the board on September 1, 1971.

3. The school board had actually filed with the District Court, prior to holding the tenure hearing for Respondent Davis, objective criteria suggested by the District Court itself as being acceptable, and

4. The objective criteria filed by both plaintiffs and the United States Government in response to the District Court's order, admits that no "objective criteria" exist which would have been applicable or relevant to the dismissal of Respondent Davis and further suggest, as proper, the very procedure utilized by petitioner, the Louisiana Teacher Tenure Law.

II. Did the Court below err in refusing to permit petitioner to supplement the record on rehearing when petitioner discovered that the record before the Court of Appeals was incomplete due to that Court's considering this matter under the expedited rules of a school desegregation *Singleton* type case on the original record and the District Court Clerk inadvertently forwarded to the Court below only that portion of the record covering proceedings on and after June 12, 1972 and omitting all District Court proceedings relative to Respondent Davis in 1971 including particularly the District Court's judgment of 1971 directing the board to proceed with the tenure hearing for Respondent Davis?

III. In any event, did the Court below err in awarding back pay to Respondent Davis in view of this Court's recent decision in *Edelman v. Jordan*, ____ US ____, 39 L.Ed. 2d 662, 94 S.Ct. ____ (March 25, 1974) construing the Eleventh Amendment of the United States Constitution to prohibit the award of retroactive money judgments against the state treasury?

STATUTES INVOLVED

The statutes and constitutional provisions involved in this case are the Eleventh and Fourteenth Amendments to the Constitution of the United States of America and Louisiana Revised Statutes, Title 17, Section 441-444 (the Louisiana Teacher Tenure Law), and Louisiana Revised Statute, Title 17, Section 421 et seq.

STATEMENT OF THE CASE

Defendants sincerely believe that the Court below completely misapprehended the facts and circumstances and chronology of events in this case due partially to the manner in which it was presented by plaintiff and partially to the fact that examination of the record which was before the Court reveals that the record considered by the Court was not complete. The record's not being complete is probably due partially to the District Court's permitting this separate action of dismissal of a teacher for cause to be filed in the original school desegregation suit, *Irma J. Smith, et al, v. Concordia Parish School Board, et al*, No. 11,577, on the docket of the District Court, which was already a voluminous record. Apparently, the District Court Clerk recognized this proceeding to be different but inadvertently forwarded to the Court of Appeals only that portion of the record commencing with, and subsequent to, the last motion filed by Respondent Davis on June 12, 1972, almost a year after his dismissal.

As a consequence, that portion of the record covering proceedings in the Court below during the school year 1970-71, during which time the District Courts in Louisiana first began ordering the filing of objective criteria pursuant to *Singleton* and during which time, including the summer of

1971, Mr. Davis was dismissed and his **proposed tenure hearing** was considered, **and affirmed,** by the District Court, does not appear in the record which was before the Court of Appeals.

Defendants respectfully submit that a complete and clear understanding of exactly what transpired with respect to Respondent Davis is so important to this Court's final decision that they should be restated even at the risk of unduly lengthening this petition for Certiorari.

By order of September 18, 1970, the judges of all divisions of the Western District of Louisiana jointly directed all school boards in the Western District to file objective criteria required by the Court below in its *Singleton* decision. In view of the importance of that order to all school systems in Louisiana, the Louisiana School Boards Association (a statewide service organization for school boards, hereinafter referred to as "LSBA") obtained an extension of time from the Judge of the Western District for school boards to respond to that order.

During this extension, LSBA convened a meeting of school superintendents and enlisted the aid of certain educational research personnel from Louisiana State University to assist in trying to formulate some reasonable "objective criteria" which school boards could utilize. After several meetings of this group, these educators concluded that teaching, much like law, was so subjective in nature that no reasonable, purely objective criteria could be devised which could be used in employment, promotion and demotion which would not seriously damage the quality of education except in a true *Singleton* situation where a reduction in force is made neces-

sary due to a drop in enrollment, etc., caused by converting to a unitary system.

In a true *Singleton* situation, all of the existing teachers are presumably competent and some are being released only because of having too many. In that situation, objective criteria such as college degree and seniority, or even a "last in-first out" rule, could be utilized as objective criteria—but only in that situation. As this committee of educators felt it could not recommend any purely objective criteria to the school boards, LSBA commenced a series of discussions with the Justice Department regarding this problem.

In the meantime, the then judges of the Western District indicated verbally that they thought the Louisiana Teacher Tenure Law might be acceptable and LSBA so notified the school boards, enclosing a suggested form for responding to the Court's order. In addition, the Chief Justice of the Western District, the Honorable Ben C. Dawkins, Jr. (the District Judge in this case), on February 15, 1971, wrote all school boards under his jurisdiction, including defendant herein, enclosing statements of objective criteria filed by two school Boards and suggesting that the other school boards should file similar statements in response to the September, 1970, order regarding objective citeria. (See Appendix C, page 27.) On March 2, 1971, defendant herein responded to the District Court's order by filing the objective criteria suggested by the Court assuming, of course, that such criteria were acceptable and approved. (See Appendix D, page 33.)

On April 16, 1971, the Justice Department filed a motion with the Court objecting to defendant's proposed objective criteria and requesting an extension of thirty (30) days within which to submit its own suggested criteria. (See Appendix E, page 39.) On April 23, 1971, defendant filed its response to

the Government's motion agreeing to the requested extension. On May 26, 1971, the Justice Department filed a motion in fifteen (15) school desegregation cases in the Monroe and Shreveport Division of the Western District requesting an additional thirty (30) day extension to file its objective criteria due to a conference having been arranged between the Justice Department and the Louisiana School Boards Association and its counsel for June 9, 1971, in Washington, which undersigned counsel for LSBA had agreed to. This extension was also granted by the Court below. (See Appendix F, page 43.)

The June 9, 1971, conference was held at the Justice Department in Washington and was attended, to the best of counsel's recollection, by Mr. David Norman and Mr. Edward Christenberry of the Justice Department, counsel for respondent herein, Mr. Stanley A. Halpin, Jr., one or two other attorneys representing plaintiffs in other Louisiana school cases, Mr. James D. Prescott, Executive Secretary of the Louisiana School Boards Association, and undersigned counsel. No final resolution of the objective criteria problem was reached, although counsel for the Justice Department seemed to understand the difficulty in devising any objective criteria to cover anything other than a pure *Singleton* situation, i.e., where there has to be a reduction in force of presumably competent teachers.

Shortly thereafter, on June 15, 1971, the Court below rendered its decision in *Smith v. Concordia Parish School Board*, 445 F.2d 285, which specifically directed the development of objective criteria to apply not only to a *Singleton* situation where a reduction in force becomes necessary due to converting to a unitary system, but to dismissals and demotions for cause as well. This was the first time that any Court

had required the development of objective criteria to apply to dismissals for cause.

Upon becoming aware of this decision LSBA again conferred with school superintendents and personnel at Louisiana State University, as well as the Justice Department, with regard to this new and different directive. At the conclusion of these additional conferences, LSBA could only conclude that it was impossible to develop realistic objective criteria to apply in determining whether or not a particular teacher should be dismissed because of dishonesty and willful neglect of duty. It became obvious that the correctness of such dismissal could only be determined by examination of the facts and evidence presented to the School Board at a tenure hearing just as jury or a judge renders its decision on the facts and evidence presented to it.

In the meantime, on June 17, 1971, the District Court, pursuant to the June 15, 1971, mandate of the Court below, issued an order directing the School Board, plaintiffs and the Justice Department to submit non-racial objective criteria within fifteen (15) days. On July 1, 1971, the District Court extended the time for filing objective criteria until July 31, 1971.

In the meantime, respondent herein, Sammy Davis, Jr., had continued to serve as principal of the Ferriday Seventh Grade School during the 1970-71 school year. Mr. Davis, along with principals of three or four of the other larger schools, had been given $1,000.00 in cash by the School Board to start the drink and candy fund for his school. During the year these school accounts at every such school were the subject of a routine audit by the school board's internal auditor. The auditor found certain discrepancies in Mr. Davis' school fund

which indicated to him that a complete audit of the funds should be made, which was completed in April, 1971.

A copy of this audit was furnished to Mr. Davis with a request that he meet with the School Board at its regular meeting of May 6, 1971, to discuss the audit and the discrepancies with the Board. The meeting of May 6, 1971, was not a formal tenure hearing and no charges had yet been leveled against Mr. Davis. It was merely an investigative step to give Mr. Davis an opportunity to explain the discrepancies without the necessity for any formal charges being filed. Mr. Davis attended that meeting with his counsel, but his explanation of the discrepancies in the books and handling of the funds was completely unsatisfactory.

Due to Mr. Davis' unsatisfactory explanation of the initial discrepancies, a further investigation was made with regard to the handling of public funds under his control and supervision. In June, 1971, the Court below was advised by defendant's legal counsel, District Attorney W. D. Falkenheiner, of the investigation into the conduct of Mr. Davis and that it was possible that the investigation would result in charges being filed against Mr. Davis under the Louisiana Teacher Tenure Law and that **if there was objection to that procedure the Board was willing to try the matter, ab initio, in the District Court.** However, the Court indicated that as this was not a desegregation matter, the Board was proceeding properly under the Teacher Tenure Law.

The investigation continued and, as a result, detailed charges were prepared and served on Mr. Davis in early August, 1971, with notice that a tenure hearing would be conducted under the Tenure Act on August 27, 1971. (See Appendix G, page 47.)

On August 16, 1971, Respondent Davis filed a motion asking the Court to restrain and enjoin the School Board from proceeding with the tenure hearing. However, on August 18, 1971, the Court below issued its ruling denying respondent's motion for an injunction and advising the Board that it was proceeding properly. (See Appendix H, page 55.)

The School Board then proceeded with its plans to hold separate tenure hearings for Mr. Davis and two other teachers during the period from August 27, 1971, to September 2, 1971. As a result of these tenure hearings, Sammy Davis, Jr., was dismissed after having been found guilty by the Board of **three of four charges of willful neglect of duty, incompetency, and dishonesty.** Cleveland Watts, a black teacher, was found **not guilty of willful neglect of duty and incompetency** by the Board and is still teaching in the Concordia Parish school system. Jean Fleming, a white teacher, was found **guilty of incompetency** on the recommendation of her **black principal** and was dismissed. Mrs. Fleming appealed the School Board's decision to the State District Court which affirmed the School Board in dismissing her with the District Court decision being affirmed on appeal in *Fleming v. Concordia Parish School Board*, 275 So.2d 795.

On August 31, 1971, the District Court instructed the Clerk to make the following minute entry in this case,

> "**The U. S. of America** is hereby granted an additional thirty days from this date within which to file OBJECTIVE CRITERIA." (Emphasis added)

On September 1, 1971, plaintiffs filed a memorandum incorporating their suggested objective criteria. (See Appendix I, page 63.) On September 2, 1971, the School Board filed its objective criteria. The United States filed its proposed ob-

jective criteria on September 30, 1972. (See Appendix J, page 67.) On September 2, 1971, the Clerk was instructed by the Court below to make the following minute entry:

> "IT IS DIRECTED BY THE COURT that when all parties have filed their proposed criteria concerning non-discriminatory, non-racial objective criteria to govern both faculty reduction and dismissals for cause that the respective attorneys meet with one another at the earliest possible date and attempt mutually to arrive upon terms of a consent decree regarding such questions. **This, of course, does not refer to matters involving dismissal actions for cause to be taken by the School Board unconnected with desegregation of the schools, where the provisions of the Louisiana Teacher Tenure Law, LSA-R.S. 17:443, et seq, is applicable."** (Emphasis added)

The District Court has not, to this date, ever approved any particular objective criteria.

Respondent Davis took no further action herein until June 12, 1972, almost one year later, when he filed a motion for further relief seeking reinstatement because of the lack of Court approved criteria.

None of the documents attached hereto as Appendix C through J were included in the record that was forwarded to the Court below by the District Court Clerk. Petitioner filed its application for rehearing in the Court below but such motion was denied.

Plaintiff's motion for supplemental relief and summary judgment was heard by the Court on September 1, 1972, after which, on that same date, the Court below issued its judgment ordering the reinstatement of Mr. Davis primarily because the School Board had not filed its objective criteria until Sep-

tember 2, 1971, a few days after Mr. Davis was dismissed. (See Appendix A, page 21.) In ordering Mr. Davis reinstated the Court below said:

> "The failure of the Board to develop and obtain court approval of objective criteria **before** Mr. Davis' hearing would alone as a matter of law entitle him to reinstatement. *Rauls v. Baker County Board of Education* (5th Cir., en banc, 1971), 445 F.2d 825 and *Cornist v. Richland Parish* (W.D. La. ND 16,322)."

Defendants timely noticed their appeal from that judgment which resulted in this Court's judgment of April 24, 1974, affirming the judgment of the Court below and ordering Mr. Davis reinstated because of the failure of the School Board to have filed the objective criteria prior to his dismissal. (See Appendix B, page 23.)

REASONS FOR GRANTING THE WRIT

I. The decision of the Court below is in direct conflict with principles established by this Court in its recent decisions in *Board of Regents v. Roth*, 1972, 408 US 564, 92 S.Ct. 2701, 33 L.Ed. 2d 548 and *Perry v. Sindermann*, 1972, 408 US 593, 92 S.Ct. 2694, 33 L.Ed. 2d 570.

Roth and *Sindermann*, together, established the principle that a non-tenured teacher could be terminated for any reason except where such termination infringed on a constitutionally protected "property interest" or amounted to a deprivation of "liberty" within the meaning of the due process clause in which case the teacher must be given a due process hearing and that a tenured teacher could be dismissed after being given a due process hearing.

The decision of the Court below holds, in effect, that

neither a non-tenured teacher, nor a tenured teacher, can be dismissed for willful neglect of duty and dishonesty involving the misuse and misappropriation of public funds and equipment, even after a full due process hearing at which the teacher is represented by counsel, unless a Federal District Court had previously approved some so-called "objective criteria" by which such dismissal was determined. And, such ruling was made in spite of the fact that the "objective criteria" filed by respondent's counsel and the United States admitted that there are no "objective criteria" which would have relevance, or be applicable to, this dismissal for cause.

II. In addition, that portion of the decision of the Court below which awards back pay to respondent, is prohibited by the Eleventh Amendment of the United States Constitution and is in direct conflict with the recent decision of this Court in *Edelman v. Jordan*, ____ US ____, 39 L.Ed. 2d 662, 94 S.Ct. ____ (March 25, 1974), where this Court held that the Eleventh Amendment to the Constitution prohibited awards requiring the use of ". . . state funds to make reparation for the past . . ."

Louisiana's teacher salary schedule is established by the State Legislature in L.R.S. 17:421, et seq, and the Legislature by direct appropriation to the State Department of Education who then distributes such funds to the respective school boards by formula, provides all funds for such salary schedule. Thus, such award of back pay comes directly from the State Treasury in contravention of *Edelman*.

III. The decision of the Court below virtually emasculates, if not outright repeals, prior decisions of that same Court in *Lee v. Roanoke City Board of Education, et al* ____ F.2d ____, (CA 5, 72-1656, June 28, 1972); *Thompson v. Madison County Board of Education*, 476 F.2d 676 (March

13, 1973) reaffirmed in *Thompson v. Madison County Board of Education*, ____ F.2d. ____ (No. 73-3509, CA 5, June 20, 1974, page 4874); *Robinson v. Jefferson County Board of Education, et al*, ____ F.2d. ____ (No. 73-2134, CA 5, October 23, 1973).

In *Lee*, the Court below held that a black teacher must be reinstated and given tenure rights when she was terminated without a hearing and without the use of non-racial objective criteria ". . . as a result of a desegregation order . . ." in violation of its decision in *Singleton*, supra. However, the Court went on to clearly hold that a school board could dismiss an incompetent or unqualified teacher under applicable state tenure laws when it said:

> "We do not, by our decision, require the Board to retain an unqualified or incompetent teacher . . . We require only that these proceedings be conducted in accordance with her rights as a tenured teacher under Alabama law. . . ."

In *Robinson v. Jefferson County Board of Education*, et al, ____ F. 2d ____ (No. 73-2134, CA 5, October 23, 1973) the Court below permitted, in a school system in the midst of the desegregation process, to dismiss a non-tenured white teacher charged with (1) incompetent performance in the classroom, (2) use of profanity in the classroom, and (3) inability to relate to ninth grade students, without a due process hearing in spite of her contention that she was dismissed for exercise of her constitutionally First Amendment rights of free speech and without any discussion whatsoever of the so-called "objective criteria."

In *Thompson v. Madison County Board of Education*, 476 F. 2d 676 (March 13, 1973) reaffirmed after remand in ____

F.2d ____ (No. 73-3509, CA 5, June 20, 1974, page 4874) the Court below held that although a teacher could not be dismissed for "incompetent performance in the classroom" without the use of so-called "objective criteria" it still specifically held that a teacher could be dismissed ". . . without reference to the school board's pre-established objective and reasonable standards . . ." where the teacher was guilty of . . .

> "types of conduct that are repulsive to the minimum standards of decency—such as honesty and integrity—resuired by virtually all employers of their employees, and **especially required of public servants such as school teachers** . . . ." (Emphasis added)

The Court below then went on to say,

> "For example, if a teacher came to school drunk, or **was found stealing from the school treasury,** or sexually assaulted a student, **the school board could substantiate on 'just cause' grounds its firing of that teacher, even though the school system was still in the process of desegregation and whether or not the school board had established any SINGLETON criteria for discharge or demotion.**" (Emphasis added)

This is exactly what occurred in this case. Respondent Davis was found guilty by the School Board of three of four counts of willful neglect of duty and dishonesty in the misuse and mismanagement of public funds and equipment entrusted to his care after a full due process hearing at which he was represented by counsel. (See Appendix G, page 47.) Yet, the Court below now says he must be reinstated, with back pay, because the Board did not have Court approved "objective criteria" at the time respondent was dismissed.

IV. The decision of the Court below either invalidates or emasculates Louisiana's long standing Teacher Tenure Law,

Louisiana Revised Statutes, Title 17, Sections 441 through 444, and overturns a long line of Louisiana jurisprudence including particularly *Fleming v. Concordia Parish School Board*, 275 So. 2d 795 and *Blanchet v. Vermillion Parish School Board*, 220 So. 2d 534.

Louisiana has a very liberal Teacher Tenure Law. It provides that a teacher first serves a probationary period of three years, during which time she may be dismissed by the Board only upon the written recommendation of the Superintendent. (LRS 17:442) It then provides that she becomes a tenured teacher at the expiration of the probationary period after which she may be dismissed only on grounds of (1) incompetency (2) willful neglect of duty and (3) dishonesty and only after a full due process hearing of which she was given a complete statement of the charges against her, at least fifteen (15) days notice of such hearing, at which she may be represented by counsel and call witnesses and which may be public or private or her option. (LRS 17:443)

In *Blanchet* the Louisiana Supreme Court affirmed the dismissal of a teacher dismissed by the school board in accordance with the Teacher Tenure Law on grounds of willful neglect of duty for refusing to obey a regulation of the school board requiring teachers to wear a shirt and tie in the classroom. This decision of the Supreme Court clearly appears to have been overruled by the decision of the Court below.

More importantly, perhaps, the *Fleming* case involved the dismissal of Mrs. Fleming by petitioner here in the same week that Respondent Davis was dismissed by petitioner. Mrs. Fleming, a white teacher of many years' experience, was recommended for dismissal by the superintendent on grounds of incompetency based upon the recommendation of Mrs. Fleming's black principal. However, instead of going to Federal

Court, Mrs. Fleming utilized her right of appeal to the state courts provided by Louisiana's Teacher Tenure Law and her dismissal by the board, after a tenure hearing, was affirmed by the Louisiana Supreme Court. It would appear that if Mr. Davis must be reinstated because of a lack of court approved "objective criteria" at the time of his dismissal, Mrs. Fleming should certainly also be reinstated.

V. Furthermore, the decision of the Court below sanctions such a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

In the summer of 1971 when Respondent Davis was notified of the Board's proposed tenure hearing to consider his dismissal, he filed a motion with the United States District Court requesting that the Board be enjoined from dismissing him or holding the tenure hearing. After a hearing at which petitioner's then counsel, the District Attorney, informed the Court that if it preferred, the Board was willing to try Respondent Davis, ab initio, in the District Court, the Court issued its decision refusing to grant the injunction and advising the Board that the District Court felt the Board was following the correct procedure in utilizing the state tenure law. (See Appendix H, page 55.) The Board then proceeded with its tenure hearing and the resultant dismissal of Respondent Davis. Respondent Davis took no further action, exercised none of his rights of appeal to the state Courts granted by the tenure law, and did not even go to the Federal Courts until almost a year later in June, 1972 when he successfully utilized the "lack of objective criteria" argument by having the District Court order his reinstatement for lack of such criteria. And even this, in spite of the Board's having previously filed "objective criteria" suggested by the District Court itself in its letter of February 15, 1970. (See Appendices C and D.)

Thus, the decision of the Court below sanctions action of the District Court which penalizes petitioner for doing exactly what the District Court directed it to do in total departure from the accepted and usual course of judicial proceedings.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

John F. Ward, Jr.
Counsel for Petitioners

CERTIFICATE

I, John F. Ward, Jr., attorney for petitioners and a member of the Bar of the United States Supreme Court, do hereby certify that on this 22nd day of July, 1974, I served copies of the foregoing Petition for Writ of Certiorari on the attorney of record for respondent herein, Mr. Stanley A. Halpin, Jr., by mailing three copies of same, postage prepaid, to him at his offices at 906 Carondelet Building, 226 Carondelet Street, New Orleans, Louisiana 70130.

John F. Ward, Jr.
Counsel for Petitioners

APPENDIX A

(Title Omitted)

No. 11,577

JUDGMENT

Prior to the beginning of the 1970-71 term defendant School Board dismissed and demoted some twenty (20) Black educators, including Principal Sammy Davis, Jr., without development and promulgation of objective criteria as required by *Singleton v. Jackson Municipal Separate School District*, 5th Cir. 1969, 419 F. 2d 1211. By order of September 3, 1971, this Court reinstated those Black educators, including Mr. Davis. On June 15, 1971, the United States Court of Appeals affirmed this order, and called for the submission of proposed objective criteria by all parties to this Court. In August, 1971, the Defendant Board again sought to dismiss Mr. Davis and he was given a hearing before the School Board as it was constituted at that time. On September 2, 1971, defendant filed their proposed objective criteria and on the same date entered its decision dismissing Mr. Davis.

The failure of the Board to develop and obtain court approval of objective criteria **before** Mr. Davis' hearing would alone, as a matter of law, entitled him to reinstatement. *Rauls v. Baker County Board of Education* (5th Cir. en banc, 1971), 445 F.2d 825 and *Cornist v. Richland Parish* (W.D. La. No. 16,322).

However, there is here an alternate ground which as a matter of law the Court also finds entitles Mr. Davis to reinstatement. That ground is that Negroes were systematically excluded from the Board which served as a hearing body to determine the charges against Mr. Davis. This Court takes judicial notice of the proceedings in *Wactor v. McKeithen* (W.D. La. No. 12663) which this Court by order of August 13, 1971 found that the scheme of selecting the Concordia

Board excluded Negroes from membership. Since that time, a new Board has been selected under the racially fair plan approved by this Court, and two Negroes now serve on the School Board and two Negroes serve on the Police Jury (including Mr. Davis).

When educators are reinstated after improper dismissal, they are entitled to back pay as a matter of course. *Rauls v. Baker County Board of Education*, 5th Cir., en banc 1971 and *Cornist v. Richland Parish* (W.D. La. No. 16,322).

For the foreging reasons, based upon the record of proceedings in this case, plaintiffs are entitled to an injunction as a matter of law.

IT IS THEREFORE ORDERED that defendants immediately reinstate Mr. Sammy Davis, Jr., as principal in the Concordia School system with full salary benefits and responsibilities and that defendants immediately award Mr. Davis back pay from the date of his dismissal to the date of his reinstatement by this Order.

THUS DONE AND SIGNED at Shreveport, Louisiana, this 1st day of September, 1972.

/s/ Ben C. Dawkins, Jr.
UNITED STATES DISTRICT JUDGE

Filed
Sept. 1, 1972

APPENDIX B

Irma J. SMITH et al., Plaintiffs-Appellees,

United States of America, Plaintiff-Intervenor,

v.

CONCORDIA PARISH SCHOOL BOARD et al., Defendants-Appellants.

No. 72-2069.

United States Court of Appeals, Fifth Circuit.

April 24, 1974.

Dismissed teacher brought suit against school board seeking reinstatement. The United States District Court for the Western District of Louisiana, at Monroe, Benjamin C. Dawkins, Jr., J., ordered immediate reinstatement with full salary benefits, responsibilities and back pay from the date of the dismissal, and school board appealed. The Court of Appeals held that where, on June 15, 1971, it had affirmed District Court order directing that all black educators be reinstated and further required that the board submit, within 15 days, nonracial objective criteria to cover both faculty reduction and dismissals for cause, and where an extension of time was thereafter granted the board to allow submission of the criteria, it was improper for the board, during that extension, to find plaintff to be unfit and dismiss him for cause under the Louisiana Teachers' Tenure Act.

Remanded with directions.

See also, D.C., 331 F.Supp. 330.

Schools and School Districts ⇐ 141(5)

Where, on June 15, 1971, Court of Appeals affirmed district court order directing that all black educators be reinstated and further required that school board submit, within 15 days, nonracial objective criteria to cover both faculty

reduction and dismissals for cause, and where an extension of time was thereafter granted the board to allow submission of the criteria, it was improper for the board, during that extension, to find teacher to be unfit and dismiss him for cause under the Louisiana Teachers' Tenure Act. LSA-R.S. 17:441-17:444.

Appeal from the United States District Court for the Western District of Louisiana.

Before TUTTLE, GODBOLD and MORGAN, Circuit Judges.

PER CURIAM:

Prior to the beginning of the 1970-71 school term, the Concordia Parish (Louisiana) School Board dismissed or demoted 20 black educators, including appellee Davis. The board acted without developing and promulgating objective criteria, as required by this court in Singleton v. Jackson Municipal Separate School District, 419 F.2d 1211 (5th Cir. 1969), rev'd on other grounds, Carter v. West Feliciana School Board, 396 U.S. 290, S.Ct. 608, 24 L.Ed.2d 477 (1970). The Federal District Court for the Northern District of Louisiana ordered all the black educators reinstated. On June 15, 1971, this court affirmed that order and further required that the board ". . . submit, within 15 days, non-discriminatory, non-racial objective criteria to cover both faculty reduction and *dismissals for cause.*" [Emphasis added.] Smith v. Concordia Parish School Board, 445 F.2d 285 at 286 (5th Cir. 1971).

In August of 1971, the school board held a hearing and found that Davis should be dismissed for alleged mismanagement of school funds. On September 2, 1971, the board filed proposed objective criteria under *Singleton, supra*, after having been granted an extension by the district court. The same day, the board entered its decision dismissing Davis. The dis-

trict court ordered immediate reinstatement of Davis with full salary benefits, responsibilities and back-pay from the date of his dismissal. The school board now appeals that order. It argues that at the time of the dismissal the district court had not approved any objective criteria filed by the board in accordance with *Singleton*; therefore, the board could dismiss Davis for cause under the Louisiana Teachers' Tenure Act (LRS 17:441-17:444).

We find this argument unacceptable. A 30-day extension had been granted the school board to allow submission of the *Singleton* criteria. It was during that extension that Davis was found to be unfit by the board. This tactic cannot be allowed. Even though the board complied with the Louisiana Teachers' Tenure Act, it did not comply with the order of this court. A delay in obtaining approval for *Singleton* criteria, even when due only partially to action of the board, cannot be used to justify failure to comply with this court's order of June 15, 1971.

We agree with the district court that Davis should be immediately reinstated. Further consideration, however, should be given possible mitigation of the back-pay award. See, Horton v. Lawrence County Board of Education, 449 F.2d 793 (5th Cir. 1917) and Bhargave v. Cloer, 355 F.Supp. 1143 (N.D.Ga.1972).[1]

This case is remanded for reinstatement of Mr. Davis and exact determination by the district court of the dollar amount of the back-pay award.

---

1. The pertinent part of Judge Edenfield's opinion in *Bhargave* says, "Nevertheless plaintiff is entitled to that portion of her wages for the 1970-71 school year which have not been paid to her, less any wages earned by plaintiff which might be applied in mitigation." *Supra* at 1146.
Therefore, the district court should determine the amount of the back-pay award due Mr. Davis, minus other salary he earned which might have mitigated the award.

Adm. Office, U. S. Courts—West Publishing Company, St. Paul, Minn.

APPENDIX C

UNITED STATES DISTRICT COURT
Western District of Louisiana

BEN C. DAWKINS, JR.
Chief Judge
Shreveport, Louisiana 71102

February 15th, 1971

TO ALL SCHOOL BOARDS IN THE SHREVEPORT AND MONROE DIVISIONS OF THIS COURT:

Gentlemen:

We enclose copies of "Statement of Objective Nonracial Criteria" filed by the Sabine Parish School Board and the Criteria filed by the West Carroll Parish School Board; and it is suggested that your Board probably would want to adopt a similar form of compliance with our Court orders heretofore entered.

This should be done at the earliest possible date.

Very truly yours,

/s/ Ben C. Dawkins, Jr.
Ben C. Dawkins, Jr.
Chief Judge

BCDjr:mf
Enclosures

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

MITCHELL WILLIAM,
ET AL, Plaintiff

VERSUS

SABINE PARISH SCHOOL
BOARD, ET AL, Defendant

CIVIL ACTION NO. 14,519
STATEMENT OF OBJECTIVE
NONRACIAL CRITERIA

Pursuant to the orders of this Honorable Court dated September 18, 1970, and October 8, 1970, and *Singleton vs. Jackson Municipal Separate School Dist.*, 419 F.2d 1211 (CA 5th Cir. 1970) at page 1218, requiring the defendant School Board to adopt and publish "nonracial objective criteria to be used in selecting the staff member who is to be dismissed or demoted. . . ." where a reduction in force of the faculty and professional staff of the school system has been made necessary due to conversion to a unitary school system in compliance with the orders of this court, the Sabine Parish School Board has adopted and hereby submits and files the following statement of such nonracial objective criteria, to-wit:

1.

In its personnel and staffing policies and procedures the Sabine Parish School Board shall afford equal opportunity to equally qualified individuals regardless of race, color, religion, or national origin.

2.

If there is to be a reduction in the number of principals, teachers, teacher aides or other professional staff members employed by the Sabine Parish School Board resulting from conversion to a unitary school system in compliance with court orders, which will result in a dismissal or demotion of any such staff members the staff members to be dismissed or

demoted shall be selected on the basis of objective and reasonable non-discriminatory standards among all the staff members of the school system. Such objective and non-discriminatory standards shall consist of the careful application of the Louisiana Teacher Tenure Law and its requirements without regard to race, color, religion or national origin.

WHEREFORE, this statement is respectfully submitted for filing and the defendants respectfully pray that the same be deemed sufficient compliance with the aforesaid judicial mandates.

Respectfully submitted:

SABINE PARISH SCHOOL BOARD

BY: /s/ Homer Martinez
Homer Martinez, President

BY: /s/ L. B. Skinner
L. B. Skinner, Superintendent

Appearance:

J. REUEL BOONE
District Attorney
Eleventh Judicial District
Many, Louisiana

THOMAS A. SELF
Assistant District Attorney
Eleventh Judicial District
Many, Louisiana
ATTORNEYS FOR SABINE PARISH SCHOOL BOARD

BY: /s/ Thomas A. Self
Thomas A. Self
Assistant District Attorney

CERTIFICATE

I hereby certify that a copy of the foregoing pleading has been served by mailing a copy to Donald Soileau, Attorney at Law, P. O. Box 70, Mamou, Louisiana, Counsel for Plaintiffs, by United States Mail, postage prepaid at Many, Louisiana, this 11th day of February, 1971.

/s/ Thomas A. Self
COUNSEL

WEST CARROLL PARISH SCHOOL BOARD
OAK GROVE, LOUISIANA
JANUARY 20, 1971

DISMISSALS AND DEMOTIONS CAUSED BY COURT ORDERED CONVERSION TO A UNITARY SYSTEM.

As of this date, the West Carroll Parish School Board has not dismissed nor demoted any staff member as a result of conversion to a unitary school system nor does it forsee that this will be necessary in the immediate future. However, in order to comply with the directive of the United States District Court, Western District of Louisiana, issued October 8, 1970, that Non-racial objective criteria be adopted for the dismissal or demotion of staff members, we respectfully submit the following criteria:

(1) Any dismissal or demotion will be done in a manner to comply with all previous orders of the United States District Court, Western District of Louisiana.

(2) Professional competencies as measured and rated by objective supervisory instruments will be used by those employees of the School Board charged with evaluating teacher effectiveness. These instruments will be used as a part of the basis of the decisions made in determining which teachers will be dismissed as a result of establishing a unitary school system.

(3) Temporarily certified teachers will be dismissed prior to the dismissal of a certified teacher taking into account the School Boards needs in the field of certification and teacher competence.

(4) All demotion or dismissal actions to dismiss staff members, whose dismissal is a result of conversion to a court ordered unitary school system shall be supported by valid and prejudice-free written evaluative reports.

(5) The West Carroll Parish School Board recognizes that competency may change and submits to the court that it would desire to dismiss or demote the least competent teachers (as determined by evaluation reports) prior to the dismissal of those judged to be more competent.

/s/ W. L. Gwin
W. L. Gwin, President
WEST CARROLL PARISH
SCHOOL BOARD

/s/ A. C. Fryday
A. C. Fryday, Secretary
WEST CARROLL PARISH
SCHOOL BOARD

APPENDIX D

Clerk
United States District Court
Western District of Louisiana
United States Courthouse
Shreveport, Louisiana

Re: Irma J. Smith, et al., Plaintiffs,
United States of America,
Plaintiff-Intervenor
v.
Concordia Parish School Board, et al.,
Defendants
Civil Action No. 11,577

Dear Sir:

Enclosed herewith is the Response of Concordia Parish School Board adopting non-racial objective criteria pursuant to a joint Order of September 18, 1970.

Very truly yours,

W. C. FALKENHEINER

WCF:sal

cc: Judge B. C. Dawkins, Jr.

It was moved by Mr. Bamburg, seconded by Mr. Jacobs that the following resolution be adopted:

RESOLUTION

WHEREAS, this Board, pursuant to the obligations imposed upon it by the Singleton decision, adopted non-racial objective criteria for use in its faculty adjustments; and,

WHEREAS, the criteria used by this Board was severely criticized by the United States District Court at the hearings in the Court in Shreveport in August, 1970; and,

WHEREAS, a letter dated February 15, 1971, has been received from that Court with two approved forms of objective criteria; and,

WHEREAS, the Board remains of the opinion that its original criteria satisfies all of the requirements of Singleton but, nevertheless, desires to fully comply with the Court's wishes; now,

THEREFORE, BE IT RESOLVED by the Concordia Parish School Board, that the original objective criteria be supplemented by adopting the following non-racial objective criteria for the dismissal or demotion of staff members, and employees, as follows:

(1) Any dismissal or demotion will be done in a manner to comply with all previous orders of the United States District Court, Western District of Louisiana.

(2) Professional competencies as measured and rated by objective supervisory instruments will be used by those employees of the School Board charged with evaluating teacher effectiveness. These instruments will be used as a part of the basis of the decisions made in determining which teachers will be dismissed as a result of establishing a unitary school system.

(3) Temporarily certified teachers will be dismissed prior

to the dismissal of a certified teacher taking into account the School Board's needs in the field of certification and teacher competence.

(4) All demotion or dismissal actions to dismiss staff members, whose dismissal is a result of conversion to a court ordered unitary school system shall be supported by valid and prejudice-free written evaluative reports.

(5) The Concordia Parish School Board recognizes that competency may change and submits to the court that it would desire to dismiss or demote the least competent teachers (as determined by evaluation reports) prior to the dismissal of those judged to be more competent.

BE IT FURTHER RESOLVED that the District Attorney be requested to furnish a copy of this resolution to the United States District Court in compliance with its order.

The vote on this resolution was as follows: YEAS—Bion Bamburg, J. W. Calhoun, J. T. Jacobs, Raymond L. Keathley, Mack Knapp, Paul D. Reed, Billy Rucker, Gilbert Savoy, and Vernon M. White; NAYS—None; and the resolution was declared adopted this, the 4th day of March, 1971.

/s/ Ben L. Green, Jr.
Ben L. Green, Jr., Secretary

/s/ J. W. Calhoun
J. W. Calhoun, President

I, Ben L. Green, Jr., Secretary of Concordia Parish School Board, do hereby certify that the above resolution is a true and correct copy of a resolution adopted by Concordia Parish School Board at a regular meeting held on the 4th day of March, 1971.

This the 4th day of March, 1971.

/s/ Ben L. Green, Jr.
Ben L. Green, Jr., Secretary
Concordia Parish School Board

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

IRMA J. SMITH, et al.,	)	
	)	
Plaintiffs,	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Intervenor,	)	CIVIL ACTION
	)	NO. 11,577
v.	)	
	)	
CONCORDIA PARISH SCHOOL BOARD, et al.,	)	
	)	
Defendants.	)	
	)	

RESPONSE OF CONCORDIA PARISH SCHOOL BOARD TO THE JOINT ORDER OF ALL JUDGES OF THE WESTERN DISTRICT OF LOUISIANA OF SEPTEMBER 18, 1970

Now into Court, through its undersigned counsel, comes the Concordia Parish School Board and responds to the September 18, 1970 joint Order of the Court regarding the filing of racially non-discriminatory objective criteria with regard to the dismissal or demotion of faculty where a reduction in force is necessary due to conversion to a unitary school system (see *Singleton v. Jackson Municipal Separate School District*, 419 F. 2d 1211, Fifth Circuit, 1969 cert. denied ____ U.S. _____, 90 S. Ct., _____ 1970) as follows:

> The Concordia Parish School Board at a regular meeting on 4 March, 1971 adopted the annexed resolution approving non-racial objective criteria similar to that previously approved by this Honorable Court for West Carroll Parish.

WHEREFORE, respondent respectfully prays that this

response be deemed good and sufficient and complete satisfaction of the September 18, 1970 Order of the Court.

Respectfully submitted,

W. C. FALKENHEINER,
Attorney for Respondent
P. O. Box 308
Vidalia, Louisiana 71373

CERTIFICATE

I certify that a copy of the above and foregoing Answer has this day been served on the following counsel of record by depositing a copy thereof in the United States Mail, postage prepaid, as follows:

Mr. George M. Strickler, Jr.
Mr. Stanley Halpin, Jr.
Suite 304, 606 Common Street
New Orleans, Louisiana 70130

Mr. Ed Christenberry
Department of Justice
Civil Rights Division
Washington, D.C. 20530
Attorneys for appellees,

Mr. John Dale Powers
P. O. Box 1588
Baton Rouge, Louisiana 70821
Attorney for Louisiana
Teachers' Association, Amicus
Curiae

Vidalia, Louisiana, this 5th day of March, 1971.

W. C. FALKENHEINER

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

IRMA J. SMITH, et al.,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION
UNITED STATES OF AMERICA,	)	NO. 11,577
	)	
Plaintiff-Intervenor,	)	
	)	
v.	)	
	)	
CONCORDIA PARISH SCHOOL	)	
et al.,	)	
Defendants.	)	

UNITED STATES' RESPONSE TO DEFENDANTS' PROPOSED FACULTY EVALUATION CRITERIA

The United States hereby enters its objection to the proposed faculty evaluation criteria filed by the defendant school board pursuant to this Court's order of September 19, 1970 and October 8, 1970 and moves the Court for the entry of an order granting the United States leave to file, within thirty (30) days, suggested possible objective criteria for the dismissal or demotion of faculty and staff personnel.

In support of this motion the United States shows to the Court as follows:

1. The United States Court of Appeals for the Fifth Circuit required in its order in *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir., 1969) that "[i]f there is to be a reduction in the number of principals, teachers, teacher-aides, or other professional staff employed

by the school district which will result in a dismissal or demotion of any such staff members, the staff member to be dismissed or demoted must be selected on the basis of objective and reasonable non-discriminatory standards from among all the staff of the school district."

2. The response filed by the defendant school board, though stating the Board's intent to comply with the orders of the Courts, fails to promulgate and list specific objective standards as directed by this Court's order.

WHEREFORE, the plaintiff prays that this Court enter an order granting the United States leave to file, within thirty (30) days, suggested possible objective criteria for the dismissal or demotion of faculty and staff personnel, and that at the conclusion of this allotted time, setting the matter down for an evidentiary hearing.

Respectfully submitted,

JERRIS LEONARD
Assistant Attorney General

DONALD E. WALTER
United States Attorney

/s/ Ben L. Krage
EDWARD S. CHRISTENBURY
BEN L. KRAGE
Attorneys
Department of Justice
Washington, D. C. 20530

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

IRMA J. SMITH, et al.,	)	
	)	
Plaintiffs,	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	CIVIL ACTION
Plaintiff-Intervenor,	)	NO. 11,577
	)	**ORDER**
v.	)	
	)	
CONCORDIA PARISH SCHOOL et al.,	)	
Defendants.	)	

The Court, having considered the defendant school board's proposed faculty evaluation criteria and the response thereto by the United States and the United States' request for leave to file within thirty (30) days suggested possible criteria for the Court's consideration, and being of the opinion that the request of the United States is well taken, it is therefore

ORDERED

That the United States is granted leave to file, within thirty (30) days of the entry of this Order, suggested objective criteria for faculty and staff evaluation.

The Court shall set an evidentiary hearing for determination of appropriate non-racial objective criteria after receipt of the United States' suggestions.

THUS DONE and SIGNED THIS ____ day of April, 1971.

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the foregoing Response to Defendants' Proposed Faculty Evaluation Criteria upon counsel for all parties, by mailing same, postage prepaid, to:

W. C. Falkenheiner
Attorney at Law
P. O. Box 308
Vidalia, Louisiana 71373

Mrs. George M. Strickler, Jr.
Mr. Stanley Halpin, Jr.
Suite 304, 606 Common Street
New Orleans, Louisiana 70130

Mr. John Dale Powers
P. O. Box 1588
Baton Rouge, Louisiana, 70821

This the 16th day of April, 1971.

/s/ Ben L. Krage
BEN L. KRAGE
Attorney
Department of Justice
Washington, D. C. 20530

APPENDIX F

MOTION FOR EXTENTION OF TIME TO FILE SUGGESTED OBJECTIVE FACULTY EVALUATION CRITERIA

The United States, plaintiff and plaintiff-intervenor in the above styled and numbered cases, hereby moves this Court for an extention of thirty (30) days within which to file suggested objective criteria for faculty evaluation. In support of this motion the United States would show as follows:

1. On April 15, 1971, the United States filed a response to the proposed faculty evaluation criteria submitted by the defendant school boards in these cases and requested the Court to grant the United States 30 days within which to file suggested criteria

2. On April 29, 1971, this Court granted the United States' request and required the submission of suggested criteria within 30 days.

3. Subsequent to the Court's April 29, 1971, Order, attorneys for the United States were contacted by counsel for the Louisiana State School Board association proposing a conference with counsel prior to the submission of suggested criteria by the United States. A conference between attorneys of the Department of Justice and the Executive Secretary of the Louisiana State School Board Association and the Association's counsel, Mr. John Ward, has been scheduled for June 9, 1971.

4. This motion for extention of time has been agreed to by counsel for the Louisiana State School Board Association, Mr. John Ward, who also represents several of the defendant school boards in these cases.

WHEREFORE, the United States respectfully requests the Court to grant this motion and to enter the attached order.

DONALD E. WALTER
United States Attorney

DAVID L. NORMAN
Acting Assistant Attorney General

/s/ Ben L. Krage
EDWARD S. CHRISTENBURY
BEN L. KRAGE
Attorneys
Department of Justice
Washington, D.C. 20530

ORDER

The Court, having considered the United States' motion for an extension of time of thirty (30) days within which to file suggested faculty evaluation criteria, and the Court being of the opinion that the request of the United States is well taken and that good cause therefor has been shown, it is therefore

ORDERED

That the United States is granted an extension of time of thirty (30) days from the date of this order within which to file suggested objective criteria for faculty and staff evaluation.

THUS DONE and SIGNED this _____ day of _____, 1971.

_____
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the

foregoing Motion for Extension of Time to File Suggested Objective Faculty Evaluation Criteria upon counsel for all parties, by mailing same, postage prepaid, to:

Hal R. Henderson
District Attorney
Second Judicial District
Arcadia, Louisiana

George M. Strickler, Jr.
606 Common Street
New Orleans, Louisiana

Frank Voelker, Jr.
405 Morgan Street
Lake Providence, Louisiana

Robert W. Kostelka
District Attorney
4th Judicial District
Monroe, Louisiana 71201

J. Bennett Johnston, Jr.
406 Lane Building
Shreveport, Louisiana 71101

James J. Thornton, Jr.
Attorney at Law
406 Lane Building
Shreveport, Louisiana 71101

W. C. Falkenheiner
Office of District Attorney
Seventh Judicial District
P. O. Box 308
Vidalia, Louisiana 71373

William R. Coener
Assistant District Attorney
Fifth Judicial District
Rayville, Louisiana

E. Rudolph McIntyre
5th Judicial District
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Winnsboro, Louisiana 71295

George Griffing
Assistant District Attorney
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Sam L. Wells
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Harry J. Kron, Jr.
202 Audubon Street
Thibodaux, Louisiana 70301

Thomas L. Clarke
District Attorney
Sixth Judicial District
P. O. Box 108
St. Joseph, Louisiana 71366

Jesse N. Stone, Jr.
1116 Pierre Avenue
Shreveport, Louisiana 71103

John R. Pleasant
1004 Mid South Towers
P. O. Box 1818
Shreveport, Louisiana 71102

Thomas A. Self
Assistant District Attorney
11th Judicial District
Many, Louisiana

This the 26th day of May, 1971.

/s/ Ben L. Krage
BEN L. KRAGE
Attorney
Department of Justice
Washington, D. C. 20530

APPENDIX G

CONCORDIA PARISH SCHOOL BOARD
Ben L. Green, Jr., Superintendent
Vidalia, Louisiana 71373

August 9, 1971

Mr. Sammy Davis, Jr.
P. O. Box 444
Ferriday, La. 71334

Dear Mr. Davis:

Written and signed charges of wilful neglect of duty, incompetency, and dishonesty have been preferred against you by Mr. Ben L. Green, Jr., Supt. of Concordia Parish School system. A copy of these charges is attached to this letter as required by law.

You are further advised that a hearing of these charges will be held at nine (9:00) o'clock a.m., on the 27th day of August, 1971, at the Concordia Parish School Board Office in Vidalia, Louisiana. If you are found guilty of these charges, you may be removed from your position or otherwise disciplined. This hearing may be public or private, at your option, and you will have the right to appear with witnesses and counsel according to law.

For your further information, I am furnishing you herewith a copy of R.S. 17:443 pursuant to which these proceedings will be conducted.

Yours truly,
/s/ Ben L. Green, Jr.
Ben L. Green, Jr.
Superintendent

BLGJr/myl
Enclosures

August 9, 1971

CHARGES AGAINST SAMMY DAVIS, JR., PRINCIPAL OF FERRIDAY 7th GRADE SCHOOL

COUNT 1: Sammy Davis, Jr., while principal of the Ferriday 7th Grade School, and for the school year beginning September, 1970, was guilty of wilful neglect of duty and incompetence by violating his duties with respect to keeping accurate financial records applicable to the public funds administered by him, as shown in the audit of Clayton Starling dated March 25, 1971, a copy of which is annexed and made a part of this charge, in violation of his responsibilities and duties as set out in Paragraph O. of the Concordia Parish Handbook, Page 49, Bulletin #741, Handbook for School Administrators, State Dept. of Education of Louisiana, Resolutions of Concordia Parish School Board dated July 3, 1969, and August 17, 1970, and verbal instructions from the Superintendent of Schools and the School Board staff relative to financial records and reports given to him at principal's meetings, specifically, meetings on Friday, August 22, 1969 and Wednesday, September 30, 1970 and instructions given to him individually.

COUNT 2: Sammy Davis, Jr., while principal of the Ferriday 7th Grade School, and for the school year beginning September, 1970, was guilty of wilful neglect of duty and incompetence by violating his duties with respect to keeping accurate financial records applicable to the public funds administered by him, in addition to the deficiencies shown in the audit of Clayton Starling referred to above, by doing or failing to do the following:

1. Receipts were not properly accounted for.

2. Deposits were not made regularly.

3. There was not adequate control over the vending machine operation which resulted in about a 76% loss in profits. The profit that should have been

made is substantiated in part by the Dunn Candy Company.

4. No definite procedure in handling receipts, inventory or deposits in the vending machine operation. No certain time to take money from the vending machine, no certain person or time to count and deposit money. Deposits made at odd times for even amounts.

5. Checks were written from other than the regular check book, with some checks not supported by invoices.

6. Old invoices were allowed to accumulate without payment even when funds had been provided for this purpose by the school board office.

7. Receipts were rarely issued for cash income. Some receipts were not traceable to cash book and deposit slips.

8. The lunch fund was allowed to build up a balance throughout the school year indicating neglect in checking paid lunches against collected.

9. The lunch funds were not handled in a manner to safeguard against co-mingling of funds,

in violation of his responsibilities and duties as set out in Paragraph O. of the Concordia Parish Handbook, Page 49, Bulletin #741, Handbook for School Administrators, State Department of Education of Louisiana, Resolutions of Concordia Parish School Board dated July 3, 1969 and August 17, 1970 and verbal instructions from the Superintendent of Schools and the School Board staff relative to financial records and reports given to him at principal's meetings, specifically, meetings on Friday, August 22, 1969 and Wednesday, September 30, 1970 and instructions given to him individually.

COUNT 8: Sammy Davis, Jr., while Principal of the Ferri-

day 7th Grade School was guilty of wilful neglect of duty and incompetence in the connection with the purchase by him of a Cassette tape recorder from Wisdom's Tire and Service Company on February 12, 1971 and specifically his failure to justify the purchase of this equipment for school purposes and uses, his failure to produce and account for it at his school when requested to do so, his giving of false information to Verne Richey of the School Board staff on May 17, 1971 as to its location and use, and his failure to report the unpaid invoice for the recorder on March 12, 1971 during the audit of Clayton Starling, who specifically requested that he be furnished all unpaid invoices, and his failure to pay for this equipment until 24 June, 1971, although he was specifically requested on May 17 to immediately settle the matter with Wisdom's, all of which caused embarrassment to and had detrimental effects upon the public school system of Concordia Parish at a time when public confidence was of particularly need, all in violation of his responsibilities and duties as set out in Paragraph O. Concordia Parish Handbook, pages 20 and 49, Bulletin #741, Handbook for School Administrators, State Dept. of Education of Louisiana, Resolutions of Concordia Parish School Board dated July 3, 1969 and August 17, 1970 and verbal instructions from the Superintendent of Schools and the School Board staff relative to financial records and reports given to him at Principal's Meetings, specifically, meetings on Friday, August 22, 1969 and Wednesday, September 30, 1970 and instructions given to him individually.

COUNT 4: Sammy Davis, Jr., while Principal of the Ferriday 7th Grade School was guilty of wilful neglect of duty, incompetency, and dishonesty in connection with the use by him of the telephone number assigned to his school by reason of the fact that he did on numerous occasions, make long distance telephone calls for his own personal benefit, and use, and not for school business, and charge them to his school so that to cause the telephone company to bill the Concordia Parish School Board therefor, and the Concordia Parish School Board to pay therefor, and thereafter, pursuant to the policy of the School Board, reimbursal was made by the funds of

the Ferriday 7th Grade School by check signed by Sammy Davis, Jr., all of which is shown with in more particularity on the telephone company list of calls and copies of checks which are annexed hereto and made a part hereof, all in violation of his responsibilities and duties as set out in Paragraph O. Concordia Parish Handbook pages 20 and 49, Bulletin #741, Handbook for School Administrators, State Dept. of Education of Louisiana, Resolutions of Concordia Parish School Board dated July 3, 1969 and August 17, 1970 and verbal instructions from the Superintendent of Schools and the School Board staff relative to financial records and reports given to him at Principal's Meetings, specifically, meetings on Friday, August 22, 1969 and Wednesday, September 30, 1970 and instructions given to him individually.

/s/ Ben L. Green, Jr.
Ben L. Green, Jr., Superintendent
Concordia Parish School Board

CONCORDIA PARISH SCHOOL BOARD
Ben L. Green, Jr., Superintendent
Vidalia, Louisiana 71373

R.S. 17:443. Removal of teachers; procedure; right to appeal

A permanent teacher shall not be removed from office except upon written and signed charges of wilful neglect of duty, or incompetency or dishonesty, or of being a member of or of contributing to any group, organization, movement or corporation that is by law or injunction prohibited from operating in the state of Louisiana, or of advocating or in any manner performing any act toward bringing about integration of the races within the public school system or any public institution of higher learning of the state of Louisiana, and then only if found guilty after a hearing by the school board of the parish or city, as the case may be, which hearing may be private or public, at the option of the teacher. At least fifteen days in advance of the date of the hearing, the school board shall furnish the teacher with a copy of the written

charges. The teacher shall have the right to appear before the board with witnesses in his behalf and with counsel of his selection, all of which shall be heard by the board at the said hearing. Nothing herein contained shall impair the right of appeal to a court of competent jurisdiction.

If a permanent teacher is found guilty by a school board, after due and legal hearing as provided herein, on charges of wilful neglect of duty, or of incompetency, or dishonesty, or of being a member of or of contributing to any group, organization, movement or corporation that is by law or injunction prohibited from operating in the state of Louisiana, or of advocating or in any manner performing any act toward bringing about integration of the races within the public school system of the state of Louisiana, and ordered removed from office, or disciplined by the board, the teacher may, not more than one year from the date of the said finding, petition a court of competent jurisdiction for a full hearing to review the action of the school board, and the court shall have jurisdiction to affirm or reverse the action of the school board in the matter. If the finding of the school board is reversed by the court and the teacher is ordered reinstated and restored to duty, the teacher shall be entitled to full pay for any loss of time or salary he or she may have sustained by reason of the action of the said school board. As amended Acts 1956, No. 249, Section 1.

(Source: Acts 1922, No. 100, Section 48; Acts 1936, No. 58, Section 1; Acts 1944, No. 250, Section 1; Acts 1946, No. 297, Section 1, pars. 4, 5.)

CONCORDIA PARISH SCHOOL BOARD
Ben L. Green, Jr., Superintendent
Vidalia, Louisiana 71373

August 10, 1971

I acknowledge receipt from Superintendent Ben L. Green, Jr. the following:

(1) A copy of charges filed on Sammy Davis, Jr.

(2) A copy of the Tenure law from the Revised Statutes.

(3) A letter notifying me of charges filed by Superintendent Green.

/s/ Sammy Davis, Jr.
Date: 9-11-71
10:00 AM.

The above materials were delivered to Sammy Davis, Jr. at his home.

/s/ Ben L. Green, Jr.

Witness: /s/ W. L. Stampley

APPENDIX H

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CIVIL ACTION
NO. 11,577

IRMA J. SMITH, ET AL.

versus

CONCORDIA PARISH SCHOOL BOARD, ET AL.
UNITED STATES OF AMERICA,
Intervenor.

FOR PLAINTIFFS	MESSRS. Stanley A. Halpin, Jr. 606 Common Street New Orleans, Louisiana 70130
FOR DEFENDANTS	William C. Falkenheiner District Attorney Seventh Judicial District Vidalia, Louisiana 71373
FOR THE GOVERNMENT	Honorable John N. Mitchell Attorney General of the United States United States Department of Justice Washington, D. C. 20530

Donald E. Walter
United States Attorney
Western District of Louisiana
Post Office Box 33
Shreveport, Louisiana 71161

BEN C. DAWKINS, JR., CHIEF JUDGE

RULING

The Court carefully has considered the motion made for a preliminary injunction and temporary restraining order filed herein in behalf of Sammy Davis, Jr., Cleveland Watts, Eddie Coleman, Clarence Hymon, and Odeal Montgomery, which was presented to it during the late afternoon of August 16th, 1971.

Upon its receipt, we immediately contacted Honorable W. C. Falkenheiner, District Attorney for Concordia, and counsel for its School Board; and today have received a letter from Mr. Falkenheiner, enclosing a mass of data regarding these teachers, his letter and the original documents being attached hereto.

It appears that some of these teachers, pursuant to the Louisiana Teacher Tenure Law, LSA-R.S. 17:441, *et seq.*, have had charges filed against them by the Superintendent of Schools, Ben L. Green, Jr., which clearly are not in the slightest manner connected with desegregation orders heretofore entered in this case, nor are they racially motivated, but, on the contrary, are purely for disciplinary or other apparently valid reasons concerning their conduct as teachers in the School System. Mr. Falkenheiner's letter, and its attachments, speak for themselves and there is no need for this Court to elaborate upon them.

Obviously, the procedure being followed is in strict ac-

cordance with LSA-R.S. 17:443, a photocopy thereof being attached hereto (only the portion marked by this Court in brackets being clearly unconstitutional). It even appears that there is one non-tenured white teacher recommended not to be re-employed by her black principal, but who is to be afforded a hearing as if she did possess such tenure. Another non-tenured teacher, Joyce Smith, likewise is being afforded a hearing, as provided in § 443.

Considering all of the circumstances disclosed by Mr. Falkenheiner's letter and its attachments which show: That desegregation or racial motives are in no way involved in connection with the action proposed to be taken with respect to the persons mentioned in the motion, or the others not mentioned therein; that they simply are charged for apparent good cause with misconduct or incompetence in performing their duties; that they are entitled to a full, fair hearing before the School Board (either openly or in closed session, according to their own choice) and will be granted such, with provision for counsel to be present to represent them; and that, if the Board's decision is adverse to any of them, they have a full, complete, and adequate remedy in the State Courts of Louisiana, as shown in the statute mentioned, this Court should not and will not interfere with the orderly internal administrative processes of the School Board, which is entitled properly to manage its affairs in accordance with State law.

If we were to grant the relief prayed for in this motion, in every instance, in all school systems, not only in this District but nation-wide, where disciplinary or other action is necessitated by a teacher's conduct or by other valid circumstances such as are described in Mr. Falkenheiner's letter, this Court (and all United States District Courts where desegregation orders have been entered) literally would be flooded with similar motions, and attendant probably protracted hearings, exacerbating already overcrowded dockets, and making it virtually impossible for such Courts to perform their duties in matters in which federal law requires action

by them. Obviously, neither the Supreme Court, nor Congress in adopting the Civil Rights Act of 1964, ever contemplated or intended such a result.

Moreover, although of no particular moment, since curative action could be taken by movants' counsel, it is noted that he totally has failed to comply with the mandatory requirement of Rule 65(b)(2), F.R.Civ., P., in that he has failed to certify ". . . to the court in writing the efforts, if any, which have been made to give the notice and reasons supporting his claim that notice should not be required."

For all of these reasons, we must decline to sign the proposed Temporary Restraining Order attached to the Motion; and relegate movants to the administrative and judicial procedures available to them under State law.

THUS DONE AND SIGNED, in Chambers, at Shreveport, Louisiana, this 18th day of August, 1971.

/s/ Ben C. Dawkins, Jr.
CHIEF JUDGE

Office of
THE DISTRICT ATTORNEY
Seventh Judicial District
Concordia and Catahoula Parishes

August 16, 1971

Honorable Ben C. Dawkins, Jr.
District Judge
U. S. District Court
U. S. Post Office Bldg.
Shreveport, Louisiana

Re: Irma J. Smith, et al.,
United States of America,
vs.
Concordia Parish School Board,
et al.,
Civil Action No. 11,577

Dear Judge Dawkins:

After your telephone call of today, I have contacted Mr. Calhoun, President and Mr. Green, Superintendent; of the School Board.

The only action taken by the School Board is shown on the attached copy of the minutes of a school board meeting on the 5th day of August, 1971. The individuals covered by that resolution are the cases which I mentioned in your office with Mr. Halpin and in my Motion for Supplemental Relief of June 3, and a resume of each case is as follows:

(1) Sammy Davis, Jr., a tenured black principal against whom charges of willful neglect of duty and incompetence (3 counts) and willful neglect of duty, incompetence and dishonesty (1 count) have been filed. A copy of the charges is enclosed. A hearing under the Louisiana Tenure Law is scheduled for August 27, as shown by the letter annexed.

(2) Cleveland Watts, a tenured black teacher under a 3 year "C" certificate which has expired. Mr. Watts is a resident of the State of Mississippi and is no longer the holder of a valid Louisiana teachers certificate. He is also charged with willful neglect and incompetence by his supervisors, including a black principal. A hearing is schedeuled for September 2, 1971 under the Louisiana Tenure Law as shown by the attached letter.

(3) Bessie Luckett, a black tenured teacher against whom charges of willful neglect of duty and incompetence have been preferred by her black principal and as shown by the copy of notice enclosed, her hearing is scheduled for 2 September, 1971.

(4) Gene Fleming, is a white temporary, probationary teacher whose reemployment was not recommended by her black principal. A hearing is scheduled under the Louisiana Tenure Law for 27 August, 1971 as shown by the letter attached. In this case and the one following we are following the same procedure as to notice and hearing as in the cases of tenured teachers although the Tenure Act does not require that we go this far for the temporary people.

(5) Joyce Smith, a black temporary, probationary teacher who is single and became pregnant and whose reemployment was not recommended by her white principal and as shown by the copy of the notice enclosed, her hearing is scheduled for 27 August, 1971.

You mentioned to me on the phone only the cases of Davis and Watts as being of some objection to the plaintiffs. I assume that they do not object to the action taken in the other three cases. However, you gave me three other names being those of Eddie Coleman, Clarence Hymon and Odeal Montgomery.

Mr. Calhoun advises me that there definitely has been

no action by the school board on these people, but that a special meeting is scheduled for tomorrow (Tuesday, Aug. 17) at which the board will discuss the problems presented to it caused by a reduction in the amount of funds being received under one of the Federal grants (I believe that he told me Title I). These three last named persons were being paid under this grant and they have been furnished notices by Mr. Green of the cut-off of the these funds. The Board may have to make up the loss of these funds out of its own funds, if available, or it may decide to discontinue this program and find some other positions for these persons. In addition to Coleman, Hymon and Montgomery, all of whom are black, the same problem exists with respect to Edgar Gibson who is white. Nevertheless, the board at this time has taken no action against these persons and as I understand it, does not plan to demote them but may have to change their assignments because of the cut-off in the Federal funding of the program under which they operate.

It is regrettable, of course, that the board has to take disciplinary action against the five teachers first mentioned, but these problems always arise in dealing with personnel and the board cannot assume the responsibility for maintaining these persons in the responsible positions which they hold if they are in fact guilty under the law of serious charges. The Board should be allowed to continue with these hearings which are being held with proper notice and protection of the defendants rights, subject of course to judicial review of the results.

I appreciate the opportunity of furnishing this information to you.

With very best wishes.

Very truly yours,
/s/ W. C. Falkenheiner
W. C. FALKENHEINER
District Attorney

WCF:sal

APPENDIX I

We urge this Court to make seniority the standard governing layoffs and demotions caused by reductions in force because it is consistent with *Singleton*, fair to the educators, and easily administered by the school district. The seniority standard is objective and non-discriminatory. Furthermore, it is widely used in the field of education to determine which teachers must bear the burden of a reduction in force.[6] Perhaps the greatest advantages inherin the seniority standard are that by eliminating the exercise of discretion, the standard insures against discrimination and is easy applied. Ordinarily there will be no disputed issues of fact that might require a hearing. The school board may act with dispatch under this standard and the educator may feel that he is being dealt with fairly.

C. Standards for Dismissal, Demotion and Non-Renewal Cause.

We come now to the most difficult task before the Court —the formulation of objective criteria governing terminations and demotions for cause. We have no **"objective" criteria to offer to the Court; and as far as we know, there are none in being that comport with sound educational theory.**

Objective standards can be employed easily and fairly to execute a reduction in force, for there the administrator's object is to reduce certain positions on the faculty, not to eliminate certain faculty members. **Dismissals for cause, however involve decisions on the merits of an individual's perfor-**

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6. At least eight states have statutes making seniority the standards for laying off and recalling teachers. Hawaii Revised Statutes § 297-11; Kansas Statutes Annotated § 72-5406; Kentucky Revised Statutes § 161.800; Vernon's Annotated Missouri Statutes, § 168.221; Minnesota Statutes Annotated, Education Code, § 125.17 Subd. 11; 33 Ohio Revised Code Annotated, § 3319.17; New Jersey Statutes Annotated, Education § 18A-28-9 to 28-12; Laws of Rhode Island, § 16-13-6. One state statute fixes seniority as the standard for layoffs, Cal. Education Code § 13-447; and two other state statutes fix seniority as the standard for recall after a layoff, Arizona Revised Statutes, § 15-257; West Virginia Code Annotated § 19 A-2-2.

mance on the job. And, at least in our view, teaching is an art which cannot be evaluated quantitatively.

Accordingly, we do not propose objective criteria governing terminations and demotions for cause. Instead, we have proposed a procedure for adopting and applying criteria. We assume that at least some of the criteria adopted under our procedures would be subjective, and that decisions made pursuant to such criteria necessarily would be judgmental. We have tried, however, to objectivize the decisional process by requiring that the criteria be weighted and that the teacher's evaluation contain a written statement of reasons supporting the evaluation. Such procedural requirements make dismissals, non-renewals and demotions reviewable by the teachers, the administrators and the courts, if need be.

The standards and procedures we propose for terminations and demotions for cause are keyed to Louisiana's tenure laws. Under those laws permanent teachers—those teachers having completed satisfactorily three years of service—may only be dismissed for "willful neglect of duty, or incompetency or dishonesty . . ." R.S. 17:443. The remaining class of teachers — probationary teachers — may be dismissed "upon the written recommendation of the parish or city superintendent of schools, as the case may be, accompanied by valid reasons therefor." R.S. 17:442.

In accordance with Louisiana law we propose that the grounds for dismissing permanent teachers be limited to incompetency, willful neglect of duty and dishonesty. The grounds for dismissing probationary teachers would be the same, except that the school district is afforded more freedom to dismiss probationary teachers on the merits of their performance. Accordingly, we suggest that probationary teachers be judged on the standard of willful neglect of duty, dishonesty and "inadequate teaching performance." The latter standard is intended to be more permissive than the "incompetence" standard governing dismissals of tenured teachers.

The procedures laid out in Part C, *supra*, are intended to

cover all terminations and demotions that are not incident to a reduction in force. Thus, they will govern the renewal or non-renewal of annual contracts as well as mid-year firings. As we understand Louisiana law, non-renewals are encompassed within the statutory provisions relating to the dismissal of permanent and probationary teachers.[7]

1. **Willful Neglect and Dishonesty.**

In our view there is little value in trying to define or codify the circumstances under which a teacher might be dismissed or non-renewed for willful neglect of duty or dishonesty and, without doubt, must be made on a case-by-case basis.

Under Louisiana law, permanent teachers are entitled to a hearing before they are removed for willful neglect of duty or dishonesty, R.S. 17:443. We have carried that requirement forward into our proposed criteria. In addition, Part C requires that probationary teachers be granted a hearing prior to dismissal for willful neglect of duty or dishonesty. As we have said, "dishonesty" and "willful neglect" determinations require a firm grasp of the facts. **Hearing procedures provide the best assurance we have that there will be a full development of the facts prior to decision.**[8] This common sense aspect of the proposed procedures is reinforced by constitutional mandate. Dismissals for "willful neglect" or "dishonesty" stain the reputation of the educator and materially reduce, if not foreclose, his opportunity to practice his profession elsewhere. Last term, the Supreme Court held that "[W]here a person's good name, reputation, honor, or integrity are at stake because of what the government is doing to him, notice

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7. R.S. 17:442 provides "any teacher found unsatisfactory by the parish or city school board . . . at the expiration of the said probationary term, shall be notified in writing by the board that he has been discharged or dismissed. . . ."

8. In *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970), the Court said: "[I]n almost every setting where important decision turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses."

and an opportunity to be heard are substantial." *Wisconsin v. Constantineau*, ____ U.S. ____ (1971); *Birnbaum v. Trussel*, 371 F.2d 672 (2d Cir., 1966); *Meredith v. Allen County War Mem. Hospital Comm'n.*, 397 F.2d 33 (6th Cir., 1968).

2. **Incompetency and Inadequate Teaching Performance.**

The other permissible grounds for dismissal, non-renewal or demotion are "incompetency" for tenured teachers and "inadequate teaching performance" for probationary teachers. Dismissals for incompetency or inadequate teaching performance strike at the heart of teacher evaluation problems. To deal with the problems, we propose the inauguration of a system-wide program of evaluation for all faculty members, the faculty evaluations being made on the basis of published, non-discriminatory criteria.

In order to assure that these criteria are non-racial and suitable for the local school district, we suggest that a bi-racial faculty-administration Committee on Standards be created. This Committee should be comprised of six persons—two white faculty members appointed by the community's bi-racial committee established; two black faculty members also appointed by the bi-racial committee; and one white and one black faculty member appointed by the School Board. This Committee would be charged with the responsibility of developing non-discriminatory standards for faculty evaluation. The Committee would also be required to weight the standards or criteria it developed.[9]

The criteria developed by the Committee and the weights assigned to each criteria are to be filed with this Court on or before October 15, 1971, and thereafter on _____ _____, adopted as proposed or as revised by the Court. Once adopted by the Court, the evaluation criteria should be published.

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9. The Committee on Standards is also charged with the responsibility of weighting the standards to be used in hiring and promotion.

APPENDIX J

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

IRMA J. SMITH, et al., Plaintiffs, UNITED STATES OF AMERICA, Plaintiff-Intervenor, v. CONCORDIA PARISH SCHOOL BOARD, et al., Defendants.	CIVIL ACTION NO. 11577

MEMORANDUM OF THE UNITED STATES

I. Introduction

By order of the United States Court of Appeals for the Fifth Circuit dated June 15, 1971, and the order of this Court dated July 6, 1971, the plaintiffs, defendant school board and the United States were required to submit non-discriminatory, non-racial objective criteria to cover both faculty reduction and dismissals for cause. On August 30, 1971, plaintiffs filed a Memorandum with recommendations for (1) standards for hiring and promotion; (2) standards for lay-offs and demotions necessitated by a reduction in force; and (3) dismissals, non-renewals and demotions for cause. On the same date, defendants filed a Response to Order Requiring Production of Objective Criteria which included standards for (1) faculty reduction or demotions necessitated by conversion to a unitary system, and (2) dismissals for cause. By letter of August 31, 1971 to the Court, the United States submitted sug-

gested objective, non-racial faculty evalution criteria for determining dismissals and demotions incident to a reduction in force. At the same time, the Court granted our requested extension of time for submission of criteria for determining dismissals for cause.

This Memorandum is submitted to the Court for the purpose of commenting on the proposals of plaintiffs and defendants, with respect to criteria for dismissals and demotions for cause, and making our own recommendations concerning this matter.

II. Proposals of Plaintiffs and Defendants

The proposals of both plaintiffs and defendants concerning demotions and dismissals of teachers for cause would require, at the minimum, application of the Louisiana Teacher Tenure Act, L.R.S. § 17:443. While this statute is applicable only to tenured teachers, both parties have recommended its application to non-tenured (or probationary) teachers as well. This act specifies three grounds for which a teacher may be demoted or dismissed: incompetency, wilful neglect of duty, and dishonesty. A teacher whose dismissal or demotion is sought has a right to a hearing before the school board. At least fifteen days in advance of the hearing, the teacher must receive a written copy of the charges brought against him, presented in such specificity as to allow him (or her) to prepare a defense. At the hearing the teacher has the right to appear before the board with counsel and with witnesses in his behalf, and he may appeal the board's decision to a court of competent jurisdiction.

Plaintiffs and defendants have agreed that application of this procedure would be appropriate for dismissals or demotions for cause involving charges of wilful neglect of duty or dishonesty. Disagreement between the parties arises over the procedure to be followed when dismissal or demotion is sought on grounds of incompetency. Defendants again would require application of the procedures of L.R.S. 17:443 for both ten-

ured and non-tenured teachers. Plaintiffs have proposed additional procedural steps designed to guarantee non-discriminatory application of the teacher tenure law and to objectivize, to the degree possible, criteria to be applied in dismissals or demotions for incompetency.[1] Under this proposal a bi-racial team of six teachers (two whites and two blacks to be selected by the biracial committee, and one white and one black to be selected by the school board) would be charged with responsibility for developing non-discriminatory standards for faculty evaluation, and assign weighted scores to such standards. Thereafter, a bi-racial team (one white and one black) of teachers would evaluate bi-annually the competency of each teacher and principal in the school district based on these standards. The report of the evaluation team would serve as the sole basis for removal of teachers or principals for incompetency. No teacher could be dismissed for incompetency if his evaluation report placed him higher in competence than another teacher who was not being dismissed on the same ground.

III. Discussion

Inasmuch as the only major point of disagreement between plaintiffs and defendants concerns dismissals for cause on the grounds of incompetency, we will limit our discussion to this aspect of the proposals.[2] The difficulty of establishing objective criteria to govern demotions and dismissals for cause has been alluded to by plaintiffs. (See plaintiff's Memorandum,

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1. Plaintiffs also propose a standard of "inadequate teaching performance" for non-tenured teachers. This standard is intended to be more permissive than the incompetency standard for tenured teachers. Inasmuch as defendants have agreed to apply the same procedures for non-tenured teachers as for tenured teachers, it may be unnecessary to create this additional standard.

2. We note that defendants also made the following statement in their proposal for dismissals for cause:
   > There will be cases when a teacher or an employee is hired on a temporary basis for an ad hoc type of situation. In such cases the employment will simply expire upon termination of the particular situation involved and there will be no need to apply this criteria.

   We believe that a fuller explanation clarifying the meaning of this paragraph should be required of defendants before allowing such an exception to the tenure law.

pp. 1, 2, 11.) In attempting to objectivize a standard of incompetency, the same considerations are applicable. The following attempt to define incompetency by one Louisiana state court indicates the inherently subjective nature of this standard:

> Incompetency is a relative term which may be employed as meaning disqualification, inability or incapacity. It can refer to lack of legal qualification or fitness to discharge the required duty. It may be employed to show want of physical, intellectual or moral fitness. *Tichenor v. Orleans Parish School Board*, 144 So.2d 603 (quoting from *County Board of Education of Clark County, Ala. v. Oliver*, 270 Ala. 107, 116 So.2d 566)

In view of this difficulty, we, like the plaintiffs, believe that the goal of non-discriminatory demotions and dismissals for cause envisioned by the Court of Appeals and this Court can best be achieved through the framework of the Teacher Tenure Law, with additional procedural safeguards to protect all teachers from possible discriminatory application of these statutes. While the procedural apparatus recommended by plaintiffs is aimed at providing safeguards against such possible discriminatory application, we think it has two shortcomings:

(1) Plaintiffs candidly state that in their view, "teaching is an art which cannot be evaluated quantitatively." (p. 11) Yet, their proposal would require a bi-racial "committee of standards" to assign weighted scores to subjective criteria. In essence, their proposal requires the local teachers to attempt to perform the task assigned by the Court to the parties to this case.

(2) The task of evaluating each teacher in the school system twice a year may prove more burdensome and time-consuming than necessary to protect all teachers against discriminatory dismissal or demotion on the grounds of incompetency.

In order to meet these shortcomings, we would recom-

mend the following procedure to assure non-discriminatory application of the tenure law. A bi-racial review board, composed of an equal number of black and white teachers in the school system, would be created[3] to investigate each dismissal or demotion on grounds of incompetency prior to any hearing before the school board. As soon as a principal recommends to the superintendent that a faculty or staff member be removed on these grounds, the superintendent would direct the review board to study the charges, interview the parties involved as well as other faculty or students as the review board deemed appropriate, and submit a report to the school board in written form with a review of the facts and the unanimous or separate recommendations of the review board in each case. The bi-racial review board should be specifically instructed to concentrate its investigation and report on any evidence or allegations of racial discrimination as a basis for the dismissal or demotion. When such **evidence** or **allegations** exist, the review board should compare the dismissed faculty or staff member's competence with that of other faculty or staff members who hold similar positions.[4] Following any action by the school board, either with or without a hearing, defendants shall be required to prepare a written report of the action taken on the dismissal or demotion, including with said report a copy of the recommendation(s) and report(s) of the bi-racial review board. This report shall be kept on file by the defendants and shall be open to inspection by parties to this case and the teacher affected by any action taken by the board.[5]

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3. This committee might be chosen in the manner recommended by plaintiffs for their committee. Alternatively, it might be feasible to select this committee by allowing all faculty and staff in the system to elect a review board.

4. These judgments will, by their nature, be somewhat subjective. However, requiring a comparative analysis of teachers by a bi-racial committee of their peers should provide the necessary procedural safeguards.

5. Quite clearly, should a teacher still feel that his or her dismissal or demotion was a result of racial discrimination, legal action could be initiated in state court, L.R.S. 17:443, or federal court. See *Moses v. Washington Parish School Board*, 304 F. Supp. 1112 (E.D. La. 1969); *Cornist v. Richland Parish School Board*, —— F.2d. ——, No. 71-2148 (5th Cir., Sept. 17, 1971).

In order to keep the Court and the parties apprised of all dismissals and demotions, we believe the reporting provision presently required under the Fifth Circuit order of June 15, 1971 and this Court's order of June 17, 1971 should be amended to require the defendants to report (1) the name and race of all faculty members dismissed or demoted for cause and the grounds therefor, the date of such action, and the date of any hearing before the school board; (2) the name and race of each faculty member dismissed or demoted as a result of a reduction in force.

Respectfully submitted,

DAVID L. NORMAN
Assistant Attorney General

s/ Brian K. Landsberg
BRIAN K. LANDSBERG
EDWARD S. CHRISTENBURY
JOSEPH D. RICH
Attorneys
Department of Justice
Washington, D. C. 20530

CERTIFICATE OF SERVICE

I hereby certify that on this date I served copies of the foregoing Memorandum of the United States upon all parties by mailing copies thereof by United States mail, postage prepaid, to the following counsel of record:

W. C. Falkenheimer, Esq.
P. O. Box 308
Vidalia, Louisiana 71373

Stanley A. Halpin, Jr., Esq.
606 Common Street—Suite 304
New Orleans, Louisiana 70130

This 30th day of September, 1971.

s/ Joseph D. Rich
JOSEPH D. RICH
Attorney
Department of Justice

APPENDIX K

LOUISIANA TEACHER TENURE LAW

R.S. 17:441. Definitions

As used in this Sub-part, the word "teacher" means any employee of any parish or city school board who holds a teacher's certificate and whose legal employment requires such teacher's certificate.

R.S. 17:442. Probation and tenure of parish or city school teachers

Each teacher shall serve a probationary term of three years to be reckoned from the date of his first appointment in the parish or city in which the teacher is serving his probation. During the probationary term the parish or city school board, as the case may be, may dismiss or discharge any probationary teacher upon the written recommendation of the parish or city superintendent of schools, as the case may be, accomplished by valid reasons therefor. . . .

R.S. 17:443. Removal of teachers; procedure; right to appeal

A. A permanent teacher shall not be removed from office except upon written and signed charges of wilful neglect of duty, or incompetency or dishonesty, or of being a member of or of contributing to any group, organization, movement or corporation that is by law or injunction prohibited from operating in the State of Louisiana, and then only if found guilty after a hearing by the school board of the parish or city, as the case may be, which hearing may be private or public, at the option of the teacher. At least fifteen days in advance of the date of the hearing, the school board shall furnish the teacher with a copy of the written charges. The teacher shall have the right to appear before the board with witnesses in his behalf and with counsel of his selection, all of whom shall be heard by the board at the said hearing.

Nothing herein contained shall impair the right of appeal to a court of competent jurisdiction. . . .

R.S. 17:444. Promotions; probationary periods and tenure

Whenever a teacher who has acquired permanent status, as set forth in R.S. 17:442 and 17:443, in a parish or city school system is promoted by the employing school board by moving such teacher from a position of lower salary to one of higher salary, such teacher shall serve a probationary period of three years in the higher position before acquiring permanent status therein, but shall retain the permanent status acquired in the lower position from which he or she was promoted.

During the probationary period in the position to which promoted a teacher shall not be disciplined, removed or demoted to the lower position from which he or she was promoted except in compliance with the provisions of R.S. 17:442. At the expiration of the probationary period in the higher position, a teacher, unless removed or demoted in accordance with R.S. 17:442, shall automatically acquire permanent status in the higher position and thereafter may not be disciplined, removed or demoted from such higher position except in compliance with the provisions of R.S. 17:443.

Where a teacher has not completed the probationary period for teachers as required by R.S. 17:442, or for a particular promotional position as established herein, and is promoted to a higher position, the probationary period, either as a teacher or in the previous promotional position, shall continue to run and at the end of such three year probationary period the teacher shall automatically acquire permanent status in the previously held position until permanent status in the new position is acquired by compliance with the provisions of this Section.

Amended by Acts 1968, No. 494, § 1.